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Agencies Need Its OK

Super-Secret Court Holds Spying Reins

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WASHINGTON—It is, by all accounts, the most unusual courtroom in America. Two heavy bank-vault doors, each with a combination lock, bar the public. An electronic "sweep" is conducted before each session to prevent bugging. Even the "defendant" is not permitted inside. Indeed, he is not informed of the proceedings.

Such are the tight security precautions for the U.S. Foreign Intelligence Surveillance Court, a little-known and super-secret arm of the federal judiciary charged by law with approving or disapproving requests by U.S. intelligence agencies to spy on American citizens in this country.

So tight is the security that only a select few officials from the FBI, the Justice Department and the National Security Agency may attend the court's sessions. And, although it is housed on the sixth floor at Justice Department headquarters, the attorney general himself cannot enter the court unassisted. He does not have the lock combinations.

Presence Not Acknowledged

"We don't even acknowledge that the court is in this building," a Justice Department source said.

Now, almost two years old, the FISC (as the court is called) was created by Congress to impose a strict rule of law on federal law enforcement agents who operate inside the United States gathering foreign intelligence for national security purposes.

No longer can FBI agents or other intelligence officers do as they did in years past—secretly break into homes in the United States without court approval to tap tele-

phones or plant microphones. Now, agents wishing to take such action must come to the surveillance court for approval first.

The requirement of absolute secrecy in the court's operations was written into law so suspected Soviet spies, foreign terrorists or American collaborators would not know that the court was being asked to grant permission to monitor them.

Procedures Under Review

Today, top Reagan Administration officials are reviewing all the legal restrictions and ground rules that apply to so-called "national security" investigations. But so far there is no indication that Reagan plans to relax the surveillance court's procedures.

Establishment of the court, which is composed of seven federal judges from around the country, was considered a major step forward from the old days when FBI officials, on their own, could decide whose home should be secretly searched, wiretapped or electronically overheard.

The vagueness of those old standards led to abuses that ultimately resulted in sweeping investigations of the FBI and CIA. As one result, W. Mark Felt and Edward S. Miller, were convicted last November on charges that as FBI officials they had ordered illegal break-ins in 1972 and 1973 in searching for fugitive members of the Weather Underground.

Although the surveillance court was created to prevent such abuses, certain features of the court have displeased both conservatives and liberals.

The Washington-based Heritage Foundation, a conservative think tank that has influence in the Reagan Administration, is urging that the special court be abolished. The court is "constitutionally repugnant and a judicial aberration," the foundation said in a recent report.

Presidential Duties Cited

Sam Francis, who edited the Heritage study, said requiring all electronic surveillances in national security cases to be cleared by the court tends to infringe on the con-

stitutive power of the president to protect the nation's security.

On the other hand, some civil libertarians have criticized the special court for being, in a sense, too expeditious, too much of a rubber stamp for the intelligence agencies. In their only public accounting to date, the court's judges said last year that they had approved 207 uses of wiretaps, microphones or other "intrusive" devices and had not modified or denied any applications.

John Shattuck, national director of the American Civil Liberties Union, said the court represents an improvement over leaving national security wiretaps to the discretion of the executive branch of government.

Past Incidents Recalled

A famous instance of this former "discretion" occurred in 1969 when the administration tapped the telephones of 13 National Security Council employees and four newsmen in an effort to detect the source of news leaks about the then secret U.S. bombing of Cambodia.

Some of the wiretaps remained in effect for more than a year, but the FBI later acknowledged that they had provided no evidence against anyone. After the incident came to light during the Watergate era, it became a House Judiciary Committee article of impeachment against Nixon in 1974.

If the surveillance court had existed then, the Nixon White House would have had to show the special court there was "probable cause" to believe that each of the proposed wiretap subjects was engaging in clandestine intelligence activities.

Shattuck, despite his concession that the special court is a marked improvement, nonetheless objects that its seven judges were personally selected by Chief Justice Warren E. Burger. All are regarded as generally conservative.

ACLU's Opposition Told

In addition, Shattuck said "the ACLU opposes wiretapping in principle. It's virtually impossible to limit it so that innocent people's conversations are not picked up. That's especially true if no applications are denied by this court, which so far is their record."

Nat Hentoff, an ACLU board member and columnist for the Village Voice, protests the total secrecy